

Appl. No. : 10/036,150
Filed : December 26, 2001

REMARKS

Upon entry of the foregoing amendments, Claims 22-29, 32-34 and 38-41 are pending. Applicants have cancelled Claim 30. Applicants maintain that the cancellation of a claim makes no admission as to its patentability and reserve the right to pursue the subject matter of the cancelled claim in this or any other patent application. Applicants have amended Claims 22-27 to remove element (c). The amendments add no new matter and are fully supported by the specification as originally filed.

Applicants acknowledge the Examiner's withdrawal of the rejections under 35 U.S.C. § 102(b). The Examiner has stated that dependent Claims 28, 29, and 32-34 would be allowed if rewritten in independent form. For the reasons set forth below Applicants maintain that base Claims 22 and 27 are allowable. As such, Claims 28, 29 and 32-34 remain allowable in dependent form and are not presently amended. Applicants respond below to the rejection raised by the Examiner in the final Office Action mailed September 26, 2006. For the reasons set forth below, Applicants respectfully traverse.

Rejection Under 35 U.S.C. § 112, first paragraph - Written Description

The Examiner has maintained the rejection of Claims 22-27, 30, and 36-41 as allegedly lacking adequate written description. In particular, the Examiner states that the specification describes nucleic acids with percent identities to a DNA molecule that encodes the same mature polypeptide encoded by any of the human protein cDNAs deposited with the ATCC, and thus does not describe percent identities of nucleic acids encoding fragments of the polypeptide of SEQ ID NO: 45.

While not agreeing with the Examiner's position, in order to advance prosecution of the instant case, Applicants have canceled Claim 30 and have amended Claims 22-27 and 36-41 to no longer recite "a nucleic acid sequence encoding amino acids 77-310 of the polypeptide of SEQ ID NO: 45," thereby obviating the Examiner's rejection. Applicants accordingly respectfully request withdrawal of the rejection under 35 U.S.C. § 112, first paragraph.

The Examiner has also maintained the rejection of Claims 22-27, 30 and 38-41 for allegedly failing to comply with the written description requirement. The Examiner argues that "no written description is provided in the specification for "any species other than human" of a

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PRO4405 molecule, in which disclosure of a single 'human' polynucleotide sequence does not reasonably constitute 'the claimed genus of polynucleotides.'" *Office Action* at 3. As such, the Examiner argues that the claims "encompass only 'human' variant sequences." *Id.* at 4. Applicants respectfully disagree.

As set forth in the Summary of the Interview, in accordance with the Written Description Guidelines, the undersigned and Supervisor Janet Andres discussed the rejection under 35 U.S.C. § 112, first paragraph. In direct contrast to the statements in the final Office Action, Supervisor Andres agreed that (1) that Applicants are not required to include the word "human" in the claims as written and (2) that the claims encompass any nucleic acid sequence that has the recited percent homology and that encodes a polypeptide with the claimed function, regardless of the source of the nucleic acids. Applicants respectfully request withdrawal of the rejection of Claims 22-27 and 38-41 under 35 U.S.C. § 112, first paragraph in view of the substance of the interview.

CONCLUSION

The present application is believed to be in condition for allowance, and an early action to that effect is respectfully solicited. Applicants invite the Examiner to call the undersigned if any issues may be resolved through a telephonic conversation.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: Nov. 22, 2001

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